

**Before the
Federal Communications Commission
Washington, DC 20554**

FCC 14M-40
10191

In the Matter of	)	EB Docket No. 11-71
)	
MARITIME COMMUNICATIONS/LAND	)	File No. EB-09-1H-1751
MOBILE, LLC	)	FRN: 0013587779
)	
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
	)	Application File Nos. 0004030479,
Applicant for Modification of Various	)	0004193028, 0004193328,
Authorizations in the Wireless Radio Services	)	0004354053, 0004309872,
	)	0004310060, 0004314903,
Applicant with ENCANA OIL AND GAS (USA),	)	0004315013, 0004430505,
INC.; DUQUESNE LIGHT COMPANY, DCP	)	0004417199, 0004419431,
MIDSTREAM, LP; JACKSON COUNTY	)	0004422320, 0004422329,
RURAL MEMBERSHIP ELECTRIC	)	0004507921, 0004526264,
COOPERATIVE; PUGET SOUND ENERGY,	)	and 0004604962
INC.; ENBRIDGE ENERGY COMPANY,)	
INC.; INTERSTATE POWER AND LIGHT)	
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.; AND)	
ATLAS PIPELINE-MID CONTINENT, LLC)	
)	
For Commission Consent to the Assignment of)	
Various Authorizations in the Wireless Radio)	
Service)	

ORDER

Issued: December 4, 2014

Released: December 4, 2014

Preliminary Matters

On December 3, 2014, Warren Havens filed a Response to Motion to Strike and Motion to Strike and Preclude Based on the “Law of the Case” Doctrine (“Motion to Strike and Preclude”). It requests that the Presiding Judge strike and preclude the direct cases of both the Enforcement Bureau (“Bureau”) and Maritime Communications/Land Mobile, LLC (“Maritime”). Mr. Havens argues this relief is warranted under the “law of the case” doctrine because it would be “highly wasteful” to hold a hearing on issues that were the subject of the

partially denied Joint Motion of Enforcement Bureau and Maritime for Summary Decision on Issue G (“Summary Decision Motion”) of December 2, 2013.

The “law of the case” doctrine holds that “when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.”¹ That doctrine cannot be applied to the instant case as Mr. Havens intends.

Discussion

Movants for summary decision must carry a much different burden than parties that go to hearing. In denying the Summary Decision Motion, the Presiding Judge merely ruled that there remained significant issues of material fact as to the permanent discontinuance aspect of Issue G that required hearing. He did not rule that Maritime and the Bureau cannot succeed at hearing, which has an entirely different burden of proof. Nor did he make any ruling that would bar Maritime and the Bureau from presenting relevant facts or arguments in their trial briefs. Striking the direct cases of Maritime and the Bureau is an unheard of draconian remedy that would sabotage this hearing and would be totally indefensible.

In fact, upon closer review, Mr. Havens’ Motion to Strike and Preclude is little more than a thinly veiled, and equally thinly reasoned, argument for summary decision in his favor. He does not identify any particular facts or arguments that warrant striking, but rather asks the Presiding Judge to indiscriminately strike the entirety of two parties’ cases, including all established facts. He does not make his Motion to Strike and Preclude in order to protect the Presiding Judge from having to consider anew repetitive arguments, but in order to blockade a hearing on Issue G. He even “references and incorporates” an impermissibly filed pleading in which he seeks a victory by summary decision.² The Motion to Strike and Preclude brazenly disregards the Presiding Judge’s proclaimed ruling last July that no further summary decision motions will be entertained,³ as well as his recent ruling that the Motion for Summary Decision on Issue G filed on October 27, 2014, by Environmental LLC (“Environmental”) and Verde Systems LLC (“Verde”), and joined by Mr. Havens, will not be ruled upon until after this hearing is concluded.⁴

The Motion to Strike and Preclude lacks any good ground to support it, is thus frivolous, and therefore is denied. It is evident that Mr. Havens, Environmental, and Verde are engaged in a concerted pattern of wasting the time of the Presiding Judge, other counsel, and other parties with their frivolous motions. Furthermore, it is incomprehensible that Mr. Havens could argue that opposing parties’ arguments are repetitive and waste time when he and complicit counsel have repeatedly brushed aside the Presiding Judge’s rulings, while contemptuously rearguing settled issues and matters any time it has suited them.⁵

¹ *Arizona v. California*, 460 U.S. 605, 618 (1983).

² Motion to Strike and Preclude, Exhibit 1.

³ Order, FCC 14M-22 at 3 (rel. July 15, 2014).

⁴ Order, FCC 14M-36 (rel. Nov. 24, 2014).

⁵ See, e.g., Motion for Summary Decision on Issue (g) (filed Oct. 27, 2014) (awaiting decision).

Lastly, it has been discovered that significant portions of Mr. Havens' filing are lifted in their entirety, *i.e.* plagiarized, from the Florida State University Law Review.⁶ The Presiding Judge continues to be concerned about the apparent willingness of Mr. Havens to present the copied and pasted writings of attorneys as his own work product.

Ruling

These are matters that require addressing further in a future discussion and ruling. But for now, the most pressing business before the Presiding Judge and all counsel and parties is the hearing on December 9 and days thereafter on Issue G.

Accordingly, **IT IS ORDERED** that the Response to Motion to Strike and Motion to Strike and Preclude Based on the "Law of the Case" Doctrine filed by Warren Havens on December 3, 2014, **IS DENIED**.

IT IS FURTHER ORDERED that the pleadings incorporated in Warren Havens' self-styled "Motion to Strike and Preclude" **ARE STRUCK** in their entirety and will not be revisited by the Presiding Judge.

FEDERAL COMMUNICATIONS COMMISSION⁷



Richard L. Sippel
Chief Administrative Law Judge

⁶ Compare Motion to Strike and Preclude at 3 with Robert J. Gregory, *One Too Many Rivers to Cross: Rule 50 Practice in the Modern Era of Summary Judgment*, 23 Fla. St. U. L. Rev. 689, 710 (1996); also compare Motion to Strike and Preclude at 3-4 with Gregory at 714 n.179-80.

⁷ Courtesy copies sent to all counsel and to Mr. Warren Havens by e-mail upon issuance of this Order.